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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
ALEXANDRIA DIVISION**

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**WILLIAM POWELL**

**CIVIL ACTION NO. 12-296**

**VERSUS**

**JUDGE TRIMBLE**

**WARDEN, AVOYELLES CORRECTIONAL  
CENTER**

**MAGISTRATE JUDGE KIRK**

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**ORDER**

Before the court is the report and recommendation of the magistrate judge, issued January 4, 2013 in the above-captioned case.<sup>1</sup> The report and recommendation recommends that petitioner's writ of habeas corpus be conditionally granted unless the State of Louisiana returns petitioner to the Louisiana State Parole Board for a new parole revocation hearing which fully comports with petitioner's due process right to confront and cross-examine witnesses within sixty (60) days of a judgment adopting such report and recommendation.<sup>2</sup>

Respondent, Warden of Avoyelles Correctional Center, filed timely objections to the report and recommendation.<sup>3</sup> Respondent argues that the report and recommendation fails to address the State's time bar defense and summarily dismisses its exhaustion defense. Specifically, the respondent asserts that petitioner's claims in this matter are subject to the

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<sup>1</sup> R. 20.

<sup>2</sup> Id. at p. 25.

<sup>3</sup> R. 21.

one-year statute of limitations provided for in 28 U.S.C. § 2244. The court's review of the report and recommendation affirms respondent's allegation that timeliness is not addressed therein. The respondent also asserts that the report and recommendation's finding that "Powell has shown exhaustion of his state court remedies" does not comport with the Fifth Circuit's ruling in McBride v. Johnson,<sup>4</sup> in which the court found that McBride had expressed the requisite invocation of his right to confront and cross-examine at a parole hearing. Respondent argues that, in the instant matter, petitioner has shown no prior invocation of such due process right, resulting in a failure of exhaustion.

The court finds that a discussion of these issues is important to the development of a complete record in the matter before us and a supplemental report and recommendation is warranted, although the undersigned expresses no opinion at this time as to whether any objections are of merit. Accordingly, this matter is hereby **REFERRED** to the magistrate judge for additional consideration in light of the objections, by both parties, to the previously issued report and recommendation.

**THUS DONE AND SIGNED** in chambers at Alexandria, Louisiana this 10<sup>th</sup> day of April, 2013.

  
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**JAMES T. TRIMBLE, JR.**  
**UNITED STATES DISTRICT JUDGE**

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<sup>4</sup> 118 F.3d 432 (5<sup>th</sup> Cir. 1997).